



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.101

TA-230-2024

Date of Decision: 19.10.2024

PRIYANKA

....Applicant

Versus

PRINCE JAIN

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Ms. Naseem A. Sheikh, Advocate, for
Mr. Sarju Puri, Advocate
for the applicant.

Mr. Anmol Jindal, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. HMA/103/2024, titled '*Prince Jain Vs. Priyanka*', filed by the respondent-husband, pending in the Family Court, Ludhiana and she seeks transfer of the same to the Court of competent jurisdiction at S.B.S. Nagar.

In pursuance of the notice issued, respondent made appearance through counsel. The counsel for the respondent submits that he does not intend to file reply to the application, even though, he contests the same.

Learned counsel for the parties heard.

It is submitted by the counsel for the applicant that the marriage had taken place between the parties to the lis on 21.07.2017 and one son was born from the said wedlock, who is aged about 7 years. He is in the care and custody of the applicant. It is submitted that time and again, the respondent



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had forcibly removed the minor child, from the custody of the applicant, as a result whereof, the applicant had filed the complaint before SHO, Police Station Aur, District S.B.S. Nagar. However, no action was taken by the police authorities and as a result thereof, CRWP-34-2019 was filed and the child was got released from the custody of the respondent. During the pendency of the said criminal writ petition, matter was referred to mediation and on the basis of the same, compromise was effected and copy of the settlement/agreement is Annexure P-3.

However, soon thereafter, again the dispute arose between the parties, at the instance of the respondent, as a result whereof, again a compromise was effected between the parties, copy whereof is Annexure P-4. As per this compromise, it was agreed that the minor child shall remain in the care and custody of the applicant and the parties shall be at liberty to seek dissolution of their marriage, through a decree of divorce. However, the respondent again resiled from the compromise. Subsequently, on 23.10.2020, the respondent again forcibly removed the minor child, from the custody of the applicant and as such, an FIR bearing No.75 dated 25.10.2020, under Sections 323, 452, 506, 427, 148 and 149 IPC, was got lodged at Police Station Aur, District S.B.S. Nagar, copy whereof is Annexure P-5.

Again, the applicant was constrained to file criminal writ petition i.e. CRWP-9048-2020, for recovery of the minor child from illegal detention of the respondent and his family members and the same was allowed by this Court and the custody of the minor child was ordered to be handed over to the applicant. Copy of the said order is Annexure P-6. Only thereupon, the applicant got the custody of the minor child.



However, it is submitted that in consonance with the directions given by this Court in CRWP-9048-2020, the custody of the minor child was handed over to the applicant, for about 100 days i.e. till 10.12.2023. For the convenience of discussion, order passed by this Court is reproduced as hereingiven:-

“This settlement shall go on for one hundred days, from the day of custody, i.e., till Dec 10, 2023, and the order shall eclipse on the 11th of December 2023. In case the petitioner approaches the competent Court, under the Guardians and Wards Act, 1890, before Dec 10, 2023, the concerned Court may proceed further following the law except diluting this portion of the order till Dec 10, 2023, and if the petitioner fails to get any order in her favor under Guardians and Wards Act or fails to file an application, she must hand over custody of the child to father on Dec 10, 2023, latest by 6 PM.”

Also, it is submitted by the counsel for the applicant that in consonance with the aforesaid direction, the petition under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 25 of the Guardians and Wards Act, 1890, was filed by the applicant before Family Court, Ludhiana and the same was decided in her favour on 07.12.2023. In the said guardianship petition, the respondent had been proceeded against *ex parte* and on the basis of the order passed by the Court in the said petition, the applicant is having the custody of the minor child.

In the given circumstances, it is submitted by the counsel for the applicant that time and again, the respondent had been disturbing the custody of the minor child with the applicant. As such, it is difficult for the



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applicant to defend the petition under Section 13 of the Hindu Marriage Act, if remained pending in the Courts at Ludhiana. As such, the applicant seeks transfer of the same to Nawanshahr, where she is residing with her parental family.

On the other hand, the counsel for the respondent submits that the applicant, herself, had filed the guardianship petition in the Courts at Ludhiana and therefore, it is not difficult for her to defend the petition under Section 13 of the Hindu Marriage Act, if remained pending at Ludhiana. Also further, it is submitted that only one opportunity shall be availed by the respondent to lead evidence.

On query by the Court, it is disclosed by the counsel for the respondent that the case is still at the stage of filing reply to the main petition, by the applicant-wife.

In view of the submissions aforesaid and also taking into consideration well settled law about priority to be given to the convenience of wife, in case of transfer applications relating to the matrimonial dispute, more particularly, taking into consideration the attempt made by the respondent, to forcibly take away the custody of the minor child, in the manner, as noted aforesaid, the application is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/103/2024, titled '*Prince Jain Vs. Priyanka*', filed by the respondent-husband, stands transferred from the Family Court, Ludhiana, to the Court of competent jurisdiction at S.B.S. Nagar. The requisite record of the aforesaid case be sent by the Family Court, Ludhiana, to the District and Sessions Judge, S.B.S. Nagar.



Learned District and Sessions Judge, S.B.S. Nagar, shall assign the said petition to the Family Court, S.B.S. Nagar. Even, the parties are directed to appear before the Family Court, S.B.S. Nagar, within a period of one month from today onwards.

19.10.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No